IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITIONS No 63 to 67 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARODA PRECIMOULD PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 63 to 67 of 2004

MRS SWATI SOPARKAR for Petitioner No. 1

MS PJ DAVAWALA Addl. Central Govt. Standing Counsel for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 12/08/2004

ORAL COMMON JUDGEMENT

These are the petitions filed by five petitioner companies for sanction of a Scheme of amalgamation of

first four (the Transferor Companies) with Goradia Innovative Technologies Private Limited (the Transferee Company) under Section 391 read with Section 394 of the Companies Act, 1956.

2. All the petitioner Companies are private limited companies and belong to the group of management. The main activity of the group is to manufacture toothbrushes. All the Transferor companies in the present scheme of amalgamation are engaged in moulding activities which is one of the activity for manufacturing the toothbrushes. The Transferee Company on the other hand, was originally promoted with an objective of developing the toothbrush manufacturing technology. However, at present it is engaged in activities of mould development and repairing. The amalgamation is proposed for the synergic advantages. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies.

3. The proposed scheme was approved unanimously by the Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Transferor Companies through the consent letters which were put on record alongwith respective applications. The Equity Shareholders of the Transferee Company also approved the scheme through their consent letters. Hence, the meetings of the shareholders and creditors were not required to be held and accordingly they were dispensed with vide the order passed on 27.01.2004 annexed to the petitions as Annexure D.

4. After the petitions were admitted, the same were duly advertised in the newspapers viz, Indian Express and Loksatta-Jansatta (both Vadodara editions) dated 10th April, 2004 and the publication in the Government Gazette was dispensed with as directed in the order dated 02.04.2004. No one has come forward with any objections to the said petitions even after the publication.

5. Notice of the petition of the Petitioner Transferor Companies were served upon the Official Liquidator attached to Gujarat High Court. Vide the reports dated 3rd and 4th August 2004, filed by the Official Liquidator, it is made clear that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of their members or to the public interest.

6. Notice of the petition has been served upon the Central Govt. and Smt. P.J. Davawala, learned

Additional Standing Counsel appear for the Central Govt. has informed the Court and put on record the letter from the Registrar of Companies of Gujarat dated 19th July, 2004 alongwith of the Regional Director's letter dated 06th July, 2004 indicating that the Central Government does not have any objection to the proposed scheme of amalgamation except the compliance required under Section 21 to 23 of the Companies Act, 1956 in order to change the name of the Company. It is submitted by Mrs. Soparkar, appearing for the petitioner Companies that the observation pertaining to the clause 12 of the Scheme, it is an accepted position that the Scheme under Section 391 and 394 is a complete code in itself and considering the principle of "Single Window Clearance" it is not necessary for the petitioner Company to get separate clearances prescribed under the Companies Act, 1956. The said submission is substantiated by the decision of the Bombay High Court in the case of PMP AUTO INDUSTRIES LIMITED (80 COMPANY CASES 291) and the decision of the Gujarat High Court in the case of MANEKCHOWK AND AHMEDABAD MFG. CO. LTD. (40 COMPANY CASES 819) as also in the case of RANGKALA INVESTMENTS LIMITED (89 COMPANY CASES 754) and most recently in the case of ICICI BANK LIMITED (112 COMPANY CASES 291).

7. Considering the submissions made by Mrs. Soparkar, I am satisfied that the observation made by the Central Government is misconceived. As held by this Court in the case of RANGKALA INVESTMENTS LIMITED (SUPRA) & ICICI BANK LIMITED (SUPRA) and MANEKCHOWK MILLS LIMITED (SUPRA) as also the Bombay High Court in the case of PMP AUTO LIMITED (SUPRA), the Scheme proceedings under Sections 391 - 394 give a "single window clearance" and there is no reason to insist for a separate formality to be followed for change in the Name.

7.1 Further, it is pointed out that vide Clause 11 of the Scheme, the Share Capital of the Transferee Company is proposed to be recognized. Considering the contentions made in para 11 of Co.Pet. No. 67 of 2004, and considering the Special Resolution passed at the Extra Ordinary General Meeting dt. 27/1/2004 for the proposed reduction of capital of the Transferee company, in compliance with Sec. 100 of the Companies Act, 1956, the same is hereby specifically sanctioned. The minutes in terms of para 12 of the petition are hereby approved and the prayers in terms of para 16 (b) in case of Co.Pet. No. 67 are hereby granted.

8. I have heard Smt. Swati Soparkar, learned advocate for the petitioner Companies. Having gone

through the petitions and submissions, I am satisfied that amalgamation would be in the interest of the Companies and their members and creditors. Prayers in terms of paragraph 16 (A) in case of Company Petition No. 67 of 2004 and 15 (A) of all the other petitions are hereby granted.

9. The petitions are disposed of accordingly. So far as the costs to be paid to the Central Govt. Standing Counsel is concerned, I quantify the same at Rs. 3,500/- per petition. The same may be paid to the learned advocate Smt. P.J. Davawala.

[K.A. PUJ, J.]

#Savariya#

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